

## **TITLE 326 AIR POLLUTION CONTROL BOARD**

### **LSA Document #02-189**

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE THIRD COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from April 1, 2003, through April 22, 2003, on IDEM's draft rule language. IDEM received comments from the following parties:

Improving Kids' Environment (IKE)  
Environmental Management Institute, Inc. (EMI)

Following is a summary of the comments received and IDEM's responses thereto.

*Comment:* We disagree with the definition in the proposed rule of “chewable surfaces” at 326 IAC 23-1-6.5. If a hard metal surface clearly has chew marks on the paint, a risk assessor must consider the surface chewable and poses a lead-based paint hazard. (EMI)

*Response:* The definition of “chewable surfaces” at 326 IAC 23-1-6.5 is from the January 5, 2001, Federal Register (66 FR 1205) that amends 40 CFR 745. The definition states that materials that can be dented by the bite of a child are considered chewable.

*Comment:* Clearance is not a form of interim control in the definition of “clearance examination” at 326 IAC 23-1-7.5 and is not done for the purpose of interim controls. We suggest “clearance examination” means an activity conducted by an Indiana licensed clearance examiner for the purpose of “establishing proper completion of” interim controls.” (EMI)

*Response:* IDEM agrees with the suggested change and will clarify the definition of “clearance examination” prior to final adoption.

*Comment:* The word “common” should be added at 326 IAC 23-1-9 before “areas” to state “The common areas include”. (EMI)

*Response:* IDEM agrees with the suggested change and will clarify the definition of “common area group” prior to final adoption.

*Comment:* In the definition for “completion date” at 326 IAC 23-1-10, should the wording be “by which” or “on which”? (EMI)

*Response:* The definition of “completion date” at 326 IAC 23-1-10 should be “by which” because the sampling will have to be performed and processed before the final visual inspection is performed. These will very likely be on different days and may not be completed on the same day.

*Comment:* Change the definition of “containment” at 326 IAC 23-1-12 to mean “the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard

reduction are not spread, blown, or tracked from inside to outside the worksite”. This is the definition that the Department of Housing and Urban Development (HUD) uses and is more easily enforced than U.S. EPA’s definition. (IKE)

*Response:* HUD’s definition of containment applies only to federally owned and assisted housing and targets dust and debris leaving the worksite. HUD’s rule does not address worker protection.

U.S. EPA’s definition applies to all target housing and child-occupied facilities and is meant to protect both workers and the environment. U. S. EPA’s definition is, therefore, more protective. The department must include U.S. EPA’s definition of containment to ensure Indiana rules meet the same level of stringency and IDEM maintains federal approval and funding of the program.

*Comment:* In the definition of “contractor” at 326 IAC 23-1-12.5, add the words “in target housing” after the word “abatement”. (EMI)

*Response:* The applicability of the rule specifies that lead-based paint activities are performed in child-occupied facilities and target housing. It does not need to be restated in other sections.

*Comment:* In 326 IAC 23-1-21.5(b), (definition of dust-lead hazard) delete “residential dwelling or child-occupied facility” and replace it with “target housing” and under subsection (b)(1) delete “in a residential dwelling”. (IKE)

*Response:* The definition of “dust-lead hazard” is from the January 5, 2001, Federal Register amendments to 40 CFR 745. During the review of the second notice, U.S. EPA requested IDEM to add the complete definition from that Federal Register into the draft rule under this definition. This definition now reflects the entire federal definition.

*Comment:* The definition of “elevated intervention blood lead level” at 326 IAC 23-1-22 should be returned to the current definition of “elevated blood lead level” and amended to “ten (10) micrograms” instead of “twenty (20) micrograms of lead per deciliter of whole blood for one (1) venous test”. The change at 326 IAC 23-2-1(b)(2)(B) should remain elevated blood lead level. (IKE)

*Comment:* The definition of environmental blood lead level at 326 IAC 23-1-22(2) should be reinstated to “twenty (20) micrograms of lead per deciliter of whole blood for one (1) venous test”. (EMI)

*Response:* The definition of “environmental intervention blood lead level” at 326 IAC 23-1-26.5 in the proposed rule will be deleted. The definition of “elevated blood lead level” at 326 IAC 23-1-22 and 326 IAC 23-2-1(b)(2)(B)(ii) will reference the statutory definition at IC 13-11-2-61.5 of twenty (20) micrograms of lead per deciliter of whole blood for one (1) venous test.

*Comment:* Defining clearance as a form of interim controls at 326 IAC 23-1-34 is not consistent with federal rules and creates confusion. This definition should not have been altered and we recommend taking out “(5) Clearance.” (EMI)

*Response:* The HUD definition of “interim controls” was printed at 64 FR 50204 on September 15, 1999 to amend 24 CFR 35.110. The term “clearance” is listed as part of the definition of “interim controls”. IDEM added the word “clearance” for consistency with the federal definition.

*Comment:* In 326 IAC 23-1-52.5, subsection (b) should be a separate section of the rule instead of part of the definition of paint-lead hazard. Also, the renovator must obtain a written acknowledgment from both the owner and occupant as required by U.S. EPA. Please add “and occupant” after “owner”. U.S. EPA allows certified mail as an alternative to a written acknowledgment of receiving the pamphlet and this should be allowed in Indiana’s rules.(IKE)

*Response:* IDEM agrees and will change the last paragraph of subsection (b) to read “The renovator shall obtain from the owner and occupant a written confirmation of receipt of the lead pamphlet or a certificate of mailing from the post office”. Subsection (b) will be deleted from the definition of “paint-lead hazard” at 326 IAC 1-2-52.5 and moved to new subsection (e) at 326 IAC 23-5-2, remodeling, renovation, and maintenance activities.

*Comment:* In 326 IAC 23-2-3(g), the requirement to take a third-party examination for all licensed individuals who do not receive timely refresher training should exclude workers and clearance examiners, who are not required to take a third-party examination. (IKE)

*Response:* IDEM agrees and will clarify the requirements at 326 IAC 23-2-3(g)(2).

*Comment:* The reference at 326 IAC 23-2-4(a)(2) and (b)(2) to “section 3(d) of this rule” should be changed to “section 3(h)” since subsection (d) has been deleted. (EMI)

*Response:* IDEM agrees and will propose the change at final adoption.

*Comment:* We assume that the documentation requested at 326 IAC 23-2-4(a)(2), is to prove that an Indiana licensed supervisor is qualified to be an Indiana licensed supervisor. Amend the language to state simply “Submit a copy of the current Indiana supervisor license of the applicant or the applicant’s designated representative.” (EMI)

*Response:* IDEM agrees and will clarify the requirements for any person applying for an initial license from the department to conduct lead-based paint activities as a contractor to submit “a copy of the current Indiana lead-based paint project supervisor license of the designated representative”.

*Comment:* The time lapse between any two (2) training courses at 326 IAC 23-2-5 should be forty-four (44) months instead of thirty-six (36) months to allow a six (6) months’ leeway. Giving no leeway forces the candidate to move the refresher course date farther and farther back from the license application date and will eventually force them to take a second refresher during the three (3) year cycle. (EMI)

*Response:* The time lapse between courses in the current rule was set at twelve (12) months with a 6 months grace period. The renewal time frame was determined by IDEM when the rule was written. Now the statute sets a three (3) year renewal limit and IDEM does not have the authority to waive that requirement. Applicants will have to be aware to begin the renewal process prior to the expiration of their licenses every three (3) years.

*Comment:* In 326 IAC 23-2-5(a)(4), IDEM should add a requirement that license applicants submit one (1) copy of the most recent report that they have completed since obtaining their previous license. IDEM could use this information to target educational efforts and it would provide a way to

assess performance. (IKE)

*Response:* IDEM is working to establish a process to perform inspections of required reporting activities. By establishing this process administratively, rather than mandating submission of reports, IDEM can develop a process that is appropriate to ensure work is being conducted according to legal requirements and is supported by available resources.

*Comment:* In 326 IAC 23-3-5(g), the clearance examiner test should have twenty-five (25) questions and the risk assessor examination should have fifty (50) questions to match U.S. EPA requirements. (IKE)

*Comment:* The examination requirements at 326 IAC 23-3-5 place an unequal testing burden on trainees in the project designer, risk assessor, and clearance examiner courses. It is difficult to prepare examinations because of the non-overlap requirement of no more than twenty percent (20%) of the same questions may be retained between any two (2) examinations. We submit a proposed solution to reduce the required number of questions per required training hour for risk assessor from one hundred (100) to fifty (50), for project designer from fifty (50) to forty (40), and for clearance examiner from fifty (50) to twenty-five (25). This equalizes the number of questions to balance with the number of required course hours of class. (EMI)

*Response:* IDEM agrees to reduce the number of questions for risk assessor from one hundred (100) to fifty (50) and for clearance examiner from fifty (50) to twenty-five (25). The number of questions for inspector will increase from fifty (50) to one hundred (100) as the training course for inspector has more content and is the basis for the risk assessor course. Risk assessor applicants must take and pass both the inspector and risk assessor courses. The number for project designer has already been reduced from one hundred (100) to fifty (50) questions and an additional reduction is not warranted.

*Comment:* For consistency between rule sections at 326 IAC 23-2-6.5(a)(4) and (b)(5), change to "Submit a training certificate showing proof of completing an approved Indiana two-hour lead-based paint rules awareness course. (EMI)

*Response:* IDEM agrees that the two (2) subdivisions should have the same text. The text in 326 IAC 23-2-6.5(a)(4) and (b)(5) will be recommended to read "Have attended an approved Indiana lead-based paint two (2) hour rules awareness class".

*Comment:* A person may apply to the department to be an approved training course provider to offer the two (2) hour Indiana lead-based paint rules awareness course at 326 IAC 23-3-1(b). Why is a formal application necessary for a two (2) hour course that doesn't require an examination? It would be more cost efficient to allow any course provider with supervisor, inspector, risk assessor, or project designer approval to submit a course outline to teach the course without further application or fee. U.S. EPA allowed all approved risk assessor or inspector course providers to teach the clearance examiner course without further approval. (EMI)

*Response:* The new rules awareness training course is being created to address the need for reciprocity between states. The application process allows IDEM to ensure that the Indiana rules awareness course curricula addresses sufficiently the Indiana rules.

*Comment:* The rules awareness course required at 326 IAC 23-3-3 should make references to the relevant state agencies overseeing compliance with U.S. EPA, including OSHA and Research and Special Programs Administration (RSPA) of U.S Department of Labor requirements for managing lead and the outline should reference the particular IDEM rules of importance. We would be glad to prepare a more detailed outline for the course and make it available to all prospective training course providers if IDEM is willing to drop the requirement for separate accreditation to offer the course. (EMI)

*Response:* IDEM maintains the importance of separate accreditation for the rules awareness course for reciprocity approval. IDEM will add at 326 IAC 23-3-3(7) a requirement to include a discussion of all relevant Indiana rules during the two (2) hour rules awareness class.

*Comment:* Does the rules awareness course require a closed-book written examination at the conclusion of each course as required by 326 IAC 23-3-3(7) for initial and refresher training courses? (EMI)

*Response:* Under 326 IAC 23-3-5(i), the two (2) hour rules awareness course does not require the administration of an examination.

*Comment:* In 326 IAC 23-3-5(h), the requirement that no more than twenty percent (20%) of the same questions may be retained between two (2) examinations should only apply to sequential courses, such as risk assessor to supervisor or project designer to inspector. It doesn't matter if all the questions on the worker examination matched questions on the supervisor examination since the same people aren't taking the two (2) examinations. (EMI)

*Response:* It is possible for an applicant to hold multiple licenses and, as a result, take multiple examinations such as for worker and supervisor. Therefore, IDEM will retain this requirement for the worker examination.

*Comment:* The training course provider application fees for the clearance examiner course and the rules awareness course guarantee that only not-for-profit agencies and governmental trainers will offer these courses. The courses are too short and too infrequently offered to recoup the one thousand dollar (\$1,000) license fee. We recommend allowing approved course providers to offer them with notice only and without an additional fee to maintain market competitiveness. (EMI)

*Response:* IDEM requires application for the clearance examiner and rules awareness courses to ascertain whether all course materials follow the lead-paint program rules. There are costs associated with the department's oversight of these courses and therefore, IDEM must charge a fee for the administrative cost of this oversight. IDEM agrees that the application fee for the two (2) hour rules awareness course may discourage for-profit entities from offering these courses and will lower the fee to five hundred dollars (\$500).

With respect to the clearance examiner course, HEA 1171 requires IDEM to establish a fee, not to exceed one thousand dollars (\$1,000), per course, per year, for the application. The rule in 326 IAC 23-3-12 sets the fee at one thousand dollars (\$1000) upon renewal of the approval, which is once every three (3) years instead of annually.